

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ANGELA NAILS,

Plaintiff,

v.

**Civil Action 2:21-cv-4231
Judge Michael H. Watson
Magistrate Judge Chelsey M. Vascura**

HUNTINGTON BANK,

Defendant.

ORDER and REPORT AND RECOMMENDATION

Plaintiff, Angela Nails, a Georgia resident proceeding without the assistance of counsel, has submitted a request to file a civil action *in forma pauperis*. (ECF No. 1.) The Court **GRANTS** Plaintiff's request to proceed *in forma pauperis*. All judicial officers who render services in this action shall do so as if the costs had been prepaid. 28 U.S.C. § 1915(a). This matter is also before the Court for the initial screen of Plaintiff's Complaint as required by 28 U.S.C. § 1915(e)(2) to identify cognizable claims and to recommend dismissal of Plaintiff's Complaint, or any portion of it, which is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Having performed the initial screen, for the reasons that follow, it is **RECOMMENDED** that the Court **DISMISS** Plaintiff's action pursuant to 28 U.S.C. § 1915(e)(2) for failure to assert any claim over which this Court has subject-matter jurisdiction.

I. STANDARD OF REVIEW

Under 28 U.S.C. § 1915(e), the federal *in forma pauperis* statute, Courts must *sua sponte* dismiss an action upon determining that an *in forma pauperis* complaint fails to state a claim on which relief can be granted. Thus, a typical initial screen involves consideration of the merits of the claims asserted. In this case, however, upon review of Plaintiff's Complaint, the undersigned determines that it is unnecessary to consider the merits of the state-law defamation claims he advances because this Court lacks subject matter jurisdiction to hear such claims. When the face of the complaint provides no basis for federal jurisdiction, the Court may dismiss an action as frivolous and for lack of subject matter jurisdiction under both 28 U.S.C. § 1915(e)(2)(B) and Fed. R. Civ. P. 12(h)(3). *Williams v. Cincy Urban Apts.*, No. 1:10-cv-153, 2010 WL 883846, at *2 n.1 (S.D. Ohio Mar. 9, 2010) (citing *Carlock v. Williams*, 182 F.3d 916, 1999 WL 454880, at *2 (6th Cir. June 22, 1999) (table)).

II. ANALYSIS

Plaintiff asserts she was injured when Defendant, Huntington Bank, closed two of her bank accounts without notice. (Compl. 1–2, ECF No. 1-1.) Plaintiff's allegations fail to provide a basis for a claim over which this Court has jurisdiction. “The basic statutory grants of federal court subject-matter jurisdiction are contained in 28 U.S.C. § 1331, which provides for ‘[f]ederal-question’ jurisdiction, and § 1332, which provides for ‘[d]iversity of citizenship’ jurisdiction.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501 (2006). Federal-question jurisdiction is invoked when a plaintiff pleads a claim “arising under” the federal laws or the United States Constitution. *Id.* (citation omitted). For a federal court to have diversity jurisdiction pursuant to § 1332(a), there must be complete diversity, which means that each plaintiff must be a citizen of a different state than each defendant, and the amount in controversy must exceed \$75,000. *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

Federal Rule of Civil Procedure 8(a)(1) requires a pleading to contain “a short plain statement of the grounds for jurisdiction.” Fed. R. Civ. P. 8(a)(2). Thus, “a plaintiff seeking diversity jurisdiction [must] set forth the factual basis on which that jurisdiction is predicated.” *Farmer v. Fisher*, 386 F. App’x 554, 556 (6th Cir. 2010); *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (“[I]t is to be presumed that a cause lies outside [the Court’s] limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.”). Although this pleading standard does not require “detailed factual allegations,” a complaint will not “suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007)).

Here, Plaintiff has not identified any claims arising under federal laws or the United States Constitution to establish subject-matter jurisdiction under 28 U.S.C. § 1331. Although Plaintiff asserts the account closures violated “the banking laws and rules of closing accounts,” she identifies no such statute, regulation, or rule, federal or otherwise, and the Court is not aware of any federal authority that precludes closure of bank accounts without notice. *See, e.g., Can the Bank Close My Checking Account And Not Notify Me?*, United States Office of the Comptroller of Currency, <https://www.helpwithmybank.gov/help-topics/bank-accounts/opening-closing-inactive-bank-accounts/closing-a-bank-account/closing-notification.html> (“Generally, banks may close accounts, for any reason and without notice.”) (last visited August 31, 2021). Although some states may require banks to provide notification in advance of account closures, claims for violations of state requirements would entail state-law claims that would not satisfy § 1331.

Plaintiff instead appears to rely on diversity of citizenship pursuant to 28 U.S.C. § 1332 to establish this Court's subject-matter jurisdiction, noting that the parties are citizens of different states (Georgia and Ohio, respectively) and asserting that her "damages are over \$75,000.00 the jurisdiction of the court." (Compl. 1–2, ECF No. 1-1.) However, Plaintiff provides no further factual allegations supporting her claim of damages. The only injury Plaintiff asserts is the closure of her bank accounts, and Plaintiff does not explain how the closure of her bank accounts resulted in any monetary damages, let alone damages exceeding \$75,000. Plaintiff therefore has not plausibly alleged that § 1332's amount in controversy requirement is satisfied.

In summary, because Plaintiff has not identified any federal statutory or constitutional provision under which her claims arise, and because Plaintiff has failed to plausibly allege facts upon which this Court could rely to conclude that the requisite amount in controversy is satisfied, it is **RECOMMENDED** that the Court **DISMISS** this action for failure to assert any claim over which this Court has subject matter jurisdiction **WITHOUT PREJUDICE** to filing her claims in state court.

III. DISPOSITION

Plaintiff's Motion for Leave to Proceed *in forma pauperis* (ECF No. 1) is **GRANTED**. For the foregoing reasons, it is **RECOMMENDED** that Plaintiff's claims be **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2) and Federal Rule of Civil Procedure 12(h)(3) **WITHOUT PREJUDICE** to filing her claims in state court.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting

authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

IT IS SO ORDERED.

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE